

#### § 4.242

appeal by an aggrieved party as herein provided.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24813, Dec. 23, 1971]

#### § 4.242 Reopening.

(a) Within a period of 3 years from the date of a final decision issued by an administrative law judge or by the Board but not thereafter except as provided in §§ 4.203 and 4.206, any person claiming an interest in the estate who had no actual notice of the original proceedings and who was not on the reservation or otherwise in the vicinity at any time while the public notices of the hearing were posted may file a petition in writing for reopening of the case. Any such petition shall be addressed to the administrative law judge and filed at his headquarters. A copy of such petition shall be furnished also by the petitioner to the Superintendent. All grounds for the reopening must be set forth fully. If based on alleged errors of fact, all such allegations shall be under oath and supported by affidavits.

(b) If the administrative law judge finds that proper grounds are not shown, he shall issue an order denying the petition and setting forth the reasons for such denial. Copies of the administrative law judge's decision shall be mailed to the petitioner, the Superintendent, and to those persons who share in the estate.

(c) If the petition appears to show merit, the administrative law judge shall cause copies of the petition and all papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition. Such persons may resist such petition by filing answers, cross-petitions, or briefs. Such filings shall be made within such reasonable time periods as the administrative law judge specifies. The administrative law judge shall then reconsider, with or without hearing as he may determine, prior actions taken in the case and may either adhere to, modify, or vacate the original decision. Copies of the administrative law judge's decision shall be mailed to the petitioner, to all persons who received copies of the petition, and to the Superintendent.

#### 43 CFR Subtitle A (10-1-00 Edition)

(d) To prevent manifest error an administrative law judge may reopen a case within a period of 3 years from the date of the final decision, after due notice on his own motion, or on petition of an officer of the Bureau of Indian Affairs. Copies of the administrative law judge's decision shall be mailed to all parties in interest and to the Superintendent.

(e) The administrative law judge may suspend distribution of the estate or the income therefrom during the pendency of reopening proceedings by order directed to the Superintendent.

(f) The administrative law judge shall lodge the record made in disposing of a reopening petition with the title plant designated under § 4.236(b) and shall furnish a duplicate record thereof to the Superintendent.

(g) No distribution shall be made under a decision issued pursuant to paragraph (b), (c), or (d) of this section for a period of 60 days following the mailing of the copy of the decision as therein provided, pending the filing of a notice of appeal by an aggrieved party.

(h) If a petition for reopening is filed more than 3 years after the entry of a final decision in a probate, it shall be allowed only upon a showing that a manifest injustice will occur; that a reasonable possibility exists for correction of the error; that the petitioner had no actual notice of the original proceedings; and that petitioner was not on the reservation or otherwise in the vicinity at any time while the public notices were posted. A denial of such petition may be made by the administrative law judge on the basis of the petition and available Bureau records. No such petition shall be granted, however, unless the administrative law judge has caused copies of the petition and all other papers filed by the petitioner to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition, and after allowing such persons an opportunity to resist such petition by filing answers, cross petitions or briefs as provided in (c) of this rule.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24813, Dec. 23, 1971; 43 FR 5514, Feb. 9, 1978]

## Office of the Secretary, Interior

## §4.251

### CLAIMS

#### §4.250 Filing and proof of creditor claims; limitations.

(a) All claims against the estate of a deceased Indian held by creditors chargeable with notice of the hearing under §4.211(c) shall be filed with either the Superintendent or the administrative law judge prior to the conclusion of the first hearing, and if they are not so filed, they shall be forever barred.

(b) The claims of non-Indians shall be filed in triplicate, itemized in detail as to dates and amounts of charges for purchases or services and dates and amounts of payments on account. Such claims shall show the names and addresses of all parties in addition to the decedent from whom payment might be sought. Each claim shall be supplemented by an affidavit, in triplicate, of the claimant or someone in his behalf that the amount claimed is justly due from the decedent, that no payments have been made on the account which are not credited thereon as shown by the itemized statement, and that there are no offsets to the knowledge of the claimant.

(c) Claims of individual Indians against the estate of a deceased Indian may be presented in the manner set forth in paragraph (b) of this section or by oral evidence at the hearing where the claimant shall be subject to examination under oath relative thereto.

(d) Claims for care may not be allowed except upon clear and convincing evidence that the care was given on a promise of compensation and that compensation was expected.

(e) A claim, whether that of an Indian or non-Indian, based on a written or oral contract, express or implied, where the claim for relief has existed for such a period as to be barred by the State laws at date of decedent's death, cannot be allowed.

(f) Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an administrative law judge's interim order.

(g) Claims of a State or any of its political subdivisions on account of social

security or old-age assistance payments shall not be allowed.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 24813, Dec. 23, 1971]

#### §4.251 Priority of claims.

After allowance of the costs of administration, claims shall be allowed:

(a) Priority in payment shall be allowed in the following order except as otherwise provided in paragraph (b) of this section:

(1) Claims for expenses for last illness not in excess of \$500, and for funeral expenses not in excess of \$500;

(2) Claims of unsecured indebtedness to the United States or any of its agencies;

(3) Claims of unsecured indebtedness to a Tribe or to any of its subsidiary organizations;

(4) Claims of general creditors, including that portion of expenses of last illness not previously authorized in excess of \$500 and that portion of funeral charges not previously authorized in excess of \$500.

(b) The preference of claims may be deferred, in the discretion of the administrative law judge, in making adjustments or compromises beneficial to the estate.

(c) No claims of general creditors shall be allowed if the value of the estate is \$2,500 or less and the decedent is survived by a spouse or by one or more minor children. In no event shall claims be allowed in an aggregate amount which is in excess of the valuation of the estate; the general creditors' claims may be prorated or disallowed entirely, and the preferred claims may be prorated subject to the limitations contained in paragraph (d) of this section.

(d) If the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets.

(e) In the event that it is determined that a part or portion of the estate is to lose its trust character pursuant to